IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7188 OF 2004

Vandar Pundalik Patil & Ors. .. Petitioners

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.G.S.Godbole for the petitioners

Mr.V.P.Malvankar, A.G.P. for respondent no.1, 3 to 5

Mr.Y.R.Naik for respondent no.6 and 7

Mr.C.J.Sawant with Ghosalkar for respondent no.8

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 9TH SEPTEMBER, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. By the present petition, the petitioners are seeking a direction for withdrawal and or cancellation of the impugned order dated 2nd July 2004 issued by the State Government giving an accord to the proposal of the Market Committee of APMC, Kalyan to award a contract for construction of a building for onion/potato vegetable market.

The said contract has been awarded above 39.05% of the estimated price fixed by the APMC, Kalyan. Some of the brief facts are as under:

2. The petitioners are the members of the Market Committee of APMC, Kalyan. They are interalia empowered to vote on the various resolutions of the Market Committee. It is the case of the petitioners that some time in or about 2nd September 2003 a decision was taken to construct M type building for the onion/potato vegetable market for Kalyan, APMC at Kalyan. The tenders were invited by publishing an advertisement in Indian Express and Sakal. For the aforesaid construction work the estimated cost was worked out and fixed at Rs.2,09,37,118/-. Under the terms of the tender a person was required to quote a percentage above or lower the estimated cost. On 10th October 2003, Shashi Prabhu and Associates, Architects and Planning Consultants were appointed by APMC Kalyan for giving an advise to the Market Committee regarding submission and final evaluation of the tender.

3. Pursuant to the advertisement issued inviting the tenders, there were three eligible bidders. The rate quoted by one of the bidder being respondent no.8 herein was 40.05% above tender rates whereas other 2 bidders quoted at 48.8% above tender rates and at 49% above tender rates.

4. The said tenders were thereafter evaluated by Shashi Prabhu and Associates who opined that normally the tender at the 34.05% above estimates should be accepted as a reasonable rate. Accordingly, the said Shashi Prabhu and Associates recommended that the bids of the 3 bidders are on higher side and there is a scope for negotiation and therefore Committee should negotiate with them.

5. On 21st January 2004, the elections of A.P.M.C. Kalyan were held and the petitioners who are 8 in numbers were declared elected. It is an admitted position that there were other 8 persons who were also elected and the petitioner being 8 persons and

those other 8 persons together forms a Committee of 16 persons who are eligible and entitled to vote on various business of the Committee. The respondent no.6 was elected as Chairman of the APMC, Kalyan Market Committee.

6. On 10th June 2004, a notice was issued for a meeting of the Market Committee which was convened for 18th June 2004. One of the item on the Agenda was to take a decision about the tenders received for construction of the Market building. It is the case of the petitioner that in a meeting on 18th June 2004, all the 8 petitioners opposed the proposal. However, infact petitioner no.5 abstained from voting on the said Resolution No.7 and thus, there were only total 14 persons present. In the said meeting, the contract of respondent no.8 has been accepted at 39.05% above the tender rate. The said proposal was carried by 7 votes of the Members and 6th respondent using his casting vote as a Chairman because there was a tie of 7 votes each in support and against the said resolution.

7. On 22nd June 2004, a proposal was sent to the Director of Agricultural Marketing by respondent no.6 for his approval to awarding of the said contract. Ultimately, the entire process of according sanction by the government is completed on 6th July 2004 which is under challenged in the present petition.

8. The basic ground raised in the petition and argued before us pertains to what transpired in the meeting dated 18th June 2004. According to the petitioner, all the 8 members were present and voted against the resolution and since there were only 15 members the resolution actually failed and not carried. However, when the petitioners were shown the letter of the petitioner no.5 herself that she abstained from voting and did not vote, it is contended that the said letter has been obtained by misrepresentation. It has been further argued by the learned counsel for the petitioners that confirmation of the said decision in the next meeting is also equally illegal because the said

resolution is confirmed by all the 16 members who were present in the next meeting and there was a again a tie of 8 votes in favour and 8 votes against and the Chairman has by its casting vote confirmed the said resolution whereas in a meeting where a decision is taken to award the contract there were only 15 members and thus the 16th member who was not present in earlier meeting could not vote for confirmation of such decision.

9. On merits, the learned counsel for the petitioners have contended that the contract has been awarded on higher rate then ought to have been awarded. It was contended that the said Architect and Consultant has recommended only 34% above the tender rate whereas the proposal of the respondent no.8 has been accepted at 39.05% which was likely to result in a loss of Rs.15 lakhs to the APMC, Kalyan. It was therefore urged that the said tender should be cancelled and retender should be directed.

10. We have heard the learned counsel for the

petitioner as well as the counsel for the contractor of the APMC Committee and the State Government. We are not impressed with the arguments of the learned counsel for the petitioners in the present petition at all.

11. There were only 3 bidders in the competition. Out of the said 3 bidders, respondent no.8 was admittedly the lowest bidder. In the course of the argument, the learned counsel for the APMC informed the court and the said fact is confirmed by the petitioner that 2 of the said bidders withdrew even before the stage of negotiation and therefore there was only one bidder left who agreed to reduce his bid amount from 40.05% to 39.05% i.e. to an extent of 1%.

12. Thus, we do not find any merits in the argument of the learned counsel for the petitioners that the contract ought not to have been awarded to respondent no.8. Respondent no.8 is the lowest bidder and ultimately was the only bidder left in the tender. Whether in such circumstances, the

tender should be cancelled and retender should be ordered is a discretion within the exclusive jurisdiction and power of the APMC Committee. The Committee has decided not to cancel the tender and accept the tender of the respondent no.8. It is not for us to substitute our decision with that of the Committee. Furthermore, it cannot be merely because the Architect and Consultant has opined that the tender bid should be only 34% above the estimated price. It is a mere opinion and if there is no bidder at such rate then it is open for the committee to accept the tender which is found the lowest among the participant tenderers.

13. The argument of the learned counsel for the petitioners that when there are 8 of the 16 persons of the APMC Committee opposing such a decision then a tender is illegal and bad in law. We are afraid that it is not for this court in writ jurisdiction under Article 226 of the Constitution of India to determine the interse dispute between the members of the APMC Committee. It is also not equally permissible for us to ascertain and determine

actually what transpired in the meeting dated 18th June 2004. Whether petitioner no.5 was present and voted against the resolution or as mentioned in her letter she has abstained from voting in our view these are disputed question of facts. We cannot set aside the tender process and awarding of a tender in favour of third party merely because there are interse disputes between members of the Committee. In view thereof we are not inclined to exercise our writ jurisdiction under Article 226 of the Constitution of India.

14. The additional argument advanced by the learned counsel for the petitioners over an express haste in granting approval to the proposal both by respondent no.6, Chairman of the APMC Committee and the Government Authorities is concerned we are of the view that we cannot draw an adverse inference of malafide intention therefrom. In the government the file has passed through number of departments and therefore, it is not possible to draw any such inference of malafide intention.

15. In the light of the aforesaid facts, we do not find any merits in the present petition. We dismiss the same accordingly. However, there shall be no order as to costs.